IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 28 OF 2000

1. Special Land Acquisition
Officer (South Goa),
Konkan Railway Corporation
Limited, Amey Guest House,
Davorlim Road, P.O.
Navelim, Salcete, Goa,
403 707, and

2. Chief Engineer, Konkan
Railway Corporation Ltd.,
Rawnfond, near Margao
Railway Station, Margao, Goa. ..... Appellants.

Versus

1. Hari Shiva Naik Gaonkar
r/o. Kindlem, Canacona, Goa

2. Molu Shiva Naik Gaonkar,
r/o. Kindlem, Canacona, Goa. ..... Respondents.

Mr. E. Afonso, Advocate for the appellants.

Mr. P.A. Kamat, Advocate for th respondents.

CORAM : A.P. LAVANDE, J.

DATE : APRIL 15, 2005.

ORAL JUDGMENT :

The appellants challenge Judgment and Award dated 30.10.1999, passed by the Additional District Judge III (South Goa),

Margao in Land Acquisition Case No.206/95.

2. By Notification dated 24.7.1991, issued under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter, referred to as `the Act'), the Government acquired for Konkan Railway Corporation Ltd., large chunks of lands, situated at Nagarcem-Palolem in Canacona Taluka. An area of 400 sq. metres bearing Survey No.23/29, an area of 200 sq. metres bearing Survey No.22/10 and an area of 1900 sq. metres bearing Survey No.43/3 belonging to the respondents were part of the acquired lands. The lands in Survey No.23/29 and Survey No.22/10 were paddy fields and the land in Survey No.43/3 was bharad land. The Special Land Acquisition Officer, by his Award dated 9.12.1993, awarded Rs.9/- per sq. metre for paddy fields and Rs.17/- per sq. metre for the bharad land. The Special Land Acquisition Officer also awarded Rs.9,675/- towards fruit value and Rs.6163/- towards the wood value. The reference Court enhanced the compensation in respect of paddy fields from Rs.9/- per sq. metre to Rs.24/- per sq. metre, and in respect of the bharad land from Rs.17/- to Rs.32/- per sq. metres relying upon the Award dated 15th March, 1989 in respect of land acquired for an approach road to Talpona- Galgibag bridge in Canacona Taluka. The Award was in respect of an area of 1,34,400 sq. metres acquired by Notification dated 30/4/1986, issued under Section 4(1) of the Act.

3. The only point for determination which arises in the present appeal is whether the compensation fixed by the reference Court in respect of the paddy fields at the rate of Rs.24/- per sq. metre and in respect of the bharad land at the rate of Rs.32/- per sq. metre is legal and justified and, if not, what is the compensation payable in respect of the acquired lands ?

4. Mr. Afonso, learned Counsel appearing for the appellants submitted that the reference Court ought not to have awarded Rs.24/- per sq. metre in respect of the paddy fields inasmuch as the said lands had no building potential. The learned Counsel submitted that in any event, the reference Court ought not to have granted increase of 10 % every year based on the Award dated 15th March, 1989. The learned Counsel further submitted that in connected matters arising out of the same notification, this Court has granted Rs.19/- per sq. metre for the paddy fields and, therefore, in any event, the compensation cannot exceed Rs.19/- per sq. metre.

In so far as bharad land is concerned, the learned Counsel submitted that the reference Court could not have relied upon the earlier Award dated 15th March, 1989, which was in respect of Notification dated 30th April, 1986. It was further submitted that the reference Court ought not to have granted increase of 10 % every year in respect of

bharad land in the absence of evidence about increase in value of bharad lands by 10 % every year. The learned Counsel further submitted that in any event, the amount of Rs.9,675/- awarded by the Special Land Acquisition Officer towards the fruit value has to be adjusted towards the total compensation payable to the respondents.

5. Per contra, Mr. Kamat, learned Counsel appearing for the respondents submitted that the reference Court was absolutely justified in relying upon the Award dated 15th March, 1989 and granting 10 % increase every year in respect of the paddy fields, as well as the bharad land. According to the learned Counsel, the acquired lands were situated in Municipal area and, therefore, the acquired lands had good potential and, therefore, no interference is called for by this Court against the impugned Judgment and Award. In so far as adjustment of compensation awarded towards the fruit value by the Special Land Acquisition Officer is concerned, the learned Counsel seriously did not oppose the submission made by the learned Counsel for the appellants.

6. I have considered the submissions made by the learned Counsel appearing for the parties. In other connected appeals, under the same notification dated 24.7.1991, I have awarded Rs.19/- per sq. metre in respect of the paddy fields. For the same reasons, I award Rs.19/- per sq. metre for paddy fields in respect of Survey Nos. 23/29

and 22/10 for an area of 600 sq. metres.

7. In so far as bharad land bearing Survey No.43/3 is concerned, in my opinion, the reference Court was absolutely justified in relying upon the earlier Award dated 15.3.1989, which was an award in respect of similar land. The reference Court was also justified in granting increase of 10% every year from 30.4.1986. Accordingly, the compensation payable in respect of the bharad lands, in April, 1986 relying upon earlier Award comes to Rs.20/- and thereafter by granting increasing of 10 % every, the compensation payable in respect of the bharad land on the date of publication of Section 4 notification comes to Rs.30/- .

8. In so far as the submission of Mr. Afonso that the compensation of Rs. 9,675/- towards the fruit value has to be adjusted against the total compensation is concerned, I find considerable force in the submission of learned Counsel. The learned Counsel appearing for the respondents has not seriously disputed this position. I, therefore, hold that the total compensation of Rs.9,675/- awarded towards the fruit value by the Special Land Acquisition Officer has to be adjusted against the total compensation payable. There was no question of awarding compensation in respect of the fruit value in addition to the market rate of the acquired land.

9. In view of the above discussion, the appeal is partly allowed. The compensation payable in respect of the paddy fields bearing survey Nos. 23/29 and 22/10 is fixed at Rs.19/- per sq. metre and the compensation payable in respect of bharad land bearing Survey No.43/3 is fixed at Rs.30/- per sq. metre. The compensation of Rs.9,675/- awarded towards the fruit value shall be adjusted towards the total compensation payable to the respondent.

Having regard to the facts and circumstances of the case, the parties are directed to bear their own costs.

A.P. LAVANDE, J.

ssm.